



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL REVISION NO. 122 OF 2019**

**RASHID ALI IDRIS.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was convicted and sentenced on offences of robbery with violence contrary to section 296(2) of the Penal Code and possession of firearm without a certificate contrary to section 4(1) as read with section 4(2) and (3) of the Firearms Act and was sentenced to death on robbery with count and 10 years' imprisonment in respect of the possession of the firearm.

2. He appealed in HCCRA No. 18 of 2012 and the court dismissed appeal on robbery with violence count and sentence of death was retained while on dismissal of the appeal on count of possession of firearm the sentence was reduced to 7 years' imprisonment.

3. He lodged an appeal No. 189 of 2014 in the Court of Appeal which he withdrew on 24/10/2018.

4. He has now moved this court for re-sentencing on the basis that the mandatory death sentence imposed is unconstitutional as his mitigation was not considered. He relies on the **Supreme Court of Kenya Petition No. 15 of 2015** decision which held that the mandatory aspect of death sentence is unconstitutional.

5. The Petitioner now wishes to take advantage of the Supreme Court decision in **Francis Karioko Muruatetu (Supra)**. The said Supreme Court case considered that in re-sentencing in a case of murder, the following mitigating factors would be applicable as a guide namely:-

***(a) age of the offender***

***(b) being a first offender***

***(c) whether the offender pleaded guilty***

***(d) character and record of the offender***

***(e) Commission of the offence in relation to gender-based violence.***

***(f) remorsefulness of the offender***

***(g) the possibility of reform and social-re adaptation of the offender***

***(h) any other factor that the court considers relevant.***

6. The Supreme Court in the **Muruatetu case (Supra)** held that although the mandatory death penalty having been declared unconstitutional, the death penalty still exists as the maximum sentence for murder under Section 203 and 204 of the Penal Code.

7. The prosecution does not oppose the same application but proposes matter be taken to Lower Court for sentencing.

8. Thus, the court makes the following orders:

***(i) The death sentence in respect of robbery with violence count is set aside.***

*(ii) The matter is referred back to Chief Magistrate's Court in Garissa for sentencing in Criminal No. 301 of 2011 after considering his mitigations.*

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 27<sup>TH</sup> DAY OF MAY, 2020.**

.....

**C. KARIUKI**

**JUDGE**